

that the application with regard to this payment can be successful. Their agreement on the 24th of August, 1844, and the papers signed by them, on the 2d of September, 1846, when they themselves received \$5,842 69, of this same money, seems to me effectually to conclude them from objecting to the payment of the counsel.

But, it is said, that this payment to the counsel cannot prejudice the rights of Putney, because the agreement of the 24th of August, 1844, under which it was paid, was not signed by him.

It is to be recollected, however, that upon the record as it stood on the 2d of September, 1846, the date of the payment, Gorman and Riddle, who did make the agreement with the counsel, were the assignees of the claims of creditors to the amount of \$12,767 48, and, therefore, Green may have been excusable in treating them as entitled to make any contract they saw fit in regard to the fund.

I do not concur with the counsel for Putney in the position, that under the assignment of November, 1842, to Putney and Riddle the creditors transferred to them any and every sum which might, or should be recovered from the United States. On the contrary the assignment is expressly restricted to any claim they might have upon the government, for *losses sustained by them* in the performance of their contract with the government; every other claim of the creditors founded upon the deed to Green being reserved.

It does not distinctly appear upon what ground the sum now in question was paid—whether it was paid as a further indemnity for losses, and if so, covered by the assignment of 1842, or whether it was paid under the contract with the government, by Putney and Green, and if so, not covered by the said assignment, according to my understanding of it. The fifth report of the trustee leaves this question in some doubt.

But, be this as it may, it is very certain the parties did not treat the assignment of 1842 as absolute, and as transferring the entire interest of the creditors to any sum which might be recovered from the government.